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Attorneys for Defendants  
DE LOITTE & TOUCHE LLP  
DELOITTE TAX LLP

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES BRADY, TRAVIS CALL,  
SARAH CAVANAGH, JULIA  
LONGENECKER, PEDRO NOYOLA  
and CHRISTOPHER SULIT,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

DELOITTE & TOUCHE LLP, a limited  
liability partnership; DELOITTE TAX  
LLP; and DOES 1-10, inclusive,

Defendants.

Case No. C-08-00177 SI

The Honorable Susan Illston

**REPLY IN SUPPORT OF  
MOTION TO TRANSFER**

**Date: May 30, 2008**

**Time: 9:00 a.m.**

**Courtroom: 10**

1 **I. INTRODUCTION**

2 Plaintiffs' arguments in Opposition to Defendants' Motion to Transfer fail in  
3 light of the simple truth that both the Plaintiffs in *Mekhitarian* and *Brady* seek the  
4 same remedies on behalf of the same class members. Notwithstanding the  
5 inadmissible declaration of Plaintiffs' counsel, the *Mekhitarian* action has not been  
6 limited to cover only employees in the Lead Tax Services line. And, as can be  
7 seen from Plaintiffs' Opposition to Defendants' Motion for More Definite  
8 Statement, *Brady* has not been limited to cover only employees in Defendants'  
9 Global Employer Services ("GES") and Audit service lines. Based on the  
10 allegations in both the *Mekhitarian* and *Brady* complaints, these two actions  
11 contain nearly identical allegations on behalf of a large portion of the same  
12 putative class for which they seek the same relief.

13 Transferring the *Brady* matter to the Central District will promote the  
14 interests of justice, judicial economy, and will be in the interests of the parties and  
15 witnesses. Accordingly, Defendants request the Court grant the Motion to  
16 Transfer.

17 **II. THE MEKHITARIAN AND BRADY COMPLAINTS HAVE NOT**  
18 **BEEN LIMITED TO ENTIRELY DISTINCT EMPLOYEE GROUPS.**

19 In *Mekhitarian*, Plaintiffs allege a class action for unpaid overtime on behalf  
20 of all individuals who were employed by Defendants as Tax Associates and Tax  
21 Seniors in all tax service lines. In *Brady*, Plaintiffs seek unpaid overtime and  
22 compensation for unpaid meal and rest breaks on behalf of a putative class of "all  
23 salaried persons...[who] do accounting work but were not certified by the State of  
24 California in the practice of accounting." (FAC at ¶ 1). As the *Brady* Plaintiffs  
25 sue both Deloitte & Touche LLP and Deloitte Tax, the putative class seemingly  
26 includes Tax Associates and Tax Seniors who do "accounting work." Despite  
27 Plaintiffs' suggestion that they may agree "to amend their class definition to clarify  
28 that they are only seeking to represent a class of employees from Defendants'

1 Audit and GES practices,” they have not done so.<sup>1</sup> *See* Pls.’ Opp. at 4, footnote 3.  
 2 In fact, Plaintiffs oppose Defendants’ Motion for More Definite Statement in  
 3 which Defendants seek clarification of the scope of the putative class. *See* Pls.’  
 4 Opp. to Motion for More Definite Statement. Moreover, Plaintiffs offer to “stay  
 5 any Lead Tax component” in the Brady action pending the class certification  
 6 decision in *Mekhitarian*. Pls.’ Opp. at p. 4, footnote 3.

7 Thus, contrary to Plaintiffs’ assertions, the *Mekhitarian* and *Brady* Plaintiffs  
 8 seek to represent classes that substantially overlap. Accordingly, transferring the  
 9 *Brady* action to the Central District will avoid conflicting judgments and promote  
 10 judicial economy.

### 11 **III. DISCOVERY HAS NOT BEEN LIMITED TO LEAD TAX.**

12 Plaintiffs’ argument that transferring *Brady* to the Central District would  
 13 “disrupt the schedule and/or would unfairly prejudice the rights of employees in  
 14 this action whose rights have never been at issue in *Mekhitarian*” is without merit.  
 15 (Opp. at p. 2, lines 6-8). Plaintiffs submit a declaration from Steven Elster that  
 16 purports to describe the status of the *Mekhitarian* action. Not only is the  
 17 declaration objectionable, but it contains inaccurate statements regarding the  
 18 complaint and the parties’ discovery. The parties in that case have not limited  
 19 written discovery to only the Lead Tax Services line, but have propounded and  
 20 responded to discovery regarding Tax Associates and Tax Seniors in all service  
 21 lines. *See* Declaration of Sheryl Skibbe at ¶ 2. Armond Marcarian, lead counsel in  
 22 the *Mekhitarian* lawsuit, recently sent a letter and questionnaire soliciting  
 23 information from employees who work or worked in all lines of Defendants’ tax  
 24

25 <sup>1</sup> Even assuming the *Brady* Plaintiffs limited their proposed class to include only  
 26 employees who work in GES and Audit, this would not create mutually exclusive  
 27 classes. Employees move between lines of serve, which means that there will be  
 putative class members who have worked in both Lead Tax and GES and would be  
 included within the proposed *Mekhitarian* and *Brady* class definitions.

1 practice, including GES. Skibbe Decl. at ¶ 3 and Exh. A. Moreover, the complaint  
2 has not been amended and does not limit the class allegations to only Lead Tax.  
3 Thus, whether Plaintiffs will seek to certify a class comprised solely of Tax  
4 Associates and Tax Seniors in Lead Tax has not been established.

5 Transferring the *Brady* action to the Central District for assignment to a  
6 single judge will serve the interests of justice by eliminating the risk of conflicting  
7 orders and judgments from two District Courts and conserving the resources of the  
8 parties and the Courts.

#### 9 **IV. CONCLUSION**

10 The *Mekhitarian* and *Brady* putative classes substantially overlap. Even if  
11 the *Brady* Plaintiffs amend their Complaint to limit their claims on behalf of Audit  
12 and GES, the GES portion of their class still overlaps with *Mekhitarian*. Litigating  
13 these cases in different courts would not be in the best interests of the class, the  
14 parties, the witnesses, or judicial resources. Accordingly, Defendants respectfully  
15 renew the request that this Court enter an order transferring the action to the United  
16 States District Court for the Central District of California.

17  
18 DATED: May 16, 2008

SEYFARTH SHAW LLP

19  
20 By: 

21 Sheryl Skibbe  
22 Attorneys for Defendants  
23 DELOITTE & TOUCHE, LLP and  
24 DELOITTE TAX, LLP  
25  
26  
27

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7 Attorneys for Defendants

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19 Defendants.

Case No. C-08-00177 SI

The Honorable Susan Illston

**DECLARATION OF SHERYL  
SKIBBE IN SUPPORT OF  
MOTION TO TRANSFER**

**Date: May 30, 2008**

**Time: 9:00 a.m.**

**Courtroom: 10**

**DECLARATION OF SHERYL SKIBBE**

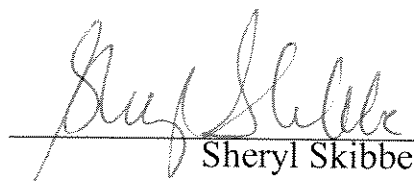
I, Sheryl Skibbe, declare as follows:

1. I am an attorney at Seyfarth Shaw LLP, attorneys of record for Defendants Deloitte Tax LLP and Deloitte & Touche LLP in this action and in the case, *Stepan Mekhitarian v. Deloitte & Touche (ICS) LLC and Deloitte Tax LLP*, Case No. CV-07-00412-DSF. I have personal knowledge of the facts stated in this declaration, acquired in the course of my representation of Defendants, and if called as a witness I could and would testify competently and truthfully to these facts.

2. The parties in the *Mekhitarian* case have not limited written discovery to only the Lead Tax Services line, but have propounded and responded to discovery regarding Tax Associates and Tax Seniors in all of Defendants' tax service lines.

3. Armond Marcarian, lead counsel in the *Mekhitarian* lawsuit, recently sent a letter and questionnaire soliciting information from employees who work or worked in all areas of tax. A copy of Marcarian's March 14, 2008 letter and questionnaire is attached hereto as Exhibit A. The letter has been redacted to protect the recipient's privacy.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this Declaration was executed this 16<sup>th</sup> day of May 2007, at Los Angeles, California.

  
Sheryl Skibbe

# EXHIBIT A

## MARCARIAN LAW FIRM

15260 Ventura Boulevard  
Penthouse Suite 2250  
Sherman Oaks, California 91403

Telephone: (818) 995-8787  
Facsimile: (818) 995-8817

March 14, 2008

Re: Stepan Mekhitarian v. Deloitte & Touche et al.  
United States District Court, Central District of California, Case No. CV07-0412 DSF (MANx)

Dear \_\_\_\_\_

We understand how precious your time is during this busy tax season. In fact, that is what the above-mentioned lawsuit is all about ... proper compensation for all the long hours you devoted to serving the needs of Deloitte and Touche LLP (or Deloitte Tax LLP) clients. HOWEVER, we need your response in order to move this lawsuit to the next level.

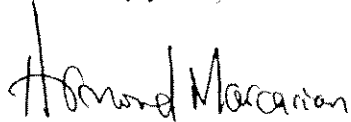
Several weeks ago we mailed you a copy of the enclosed questionnaire and a letter explaining the lawsuit. No doubt it's somewhere in your "To Do" pile, awaiting the end of the tax season. Unfortunately, the Court's schedule does not consider the tax season and we're quickly approaching a Court deadline. So, we're sending you another copy of the questionnaire.

PLEASE take a few minutes today to complete the questionnaire and return it in the enclosed postage-paid envelope. If the lawsuit is successful, these few minutes could be some of the most "profitable" minutes of your career.

In case our original letter found its way into your circular file, please visit <http://www.dtlawsuit.com> for complete details on the lawsuit. In fact, while you're there you can easily and quickly fill out the questionnaire ONLINE at: <http://www.dtlawsuit.com/form.html>.

Of course, if you have any questions about the case or the questionnaire, you are welcome to contact me at the above number or e-mail [Armond@Marcarianlaw.us](mailto:Armond@Marcarianlaw.us). *Thank you in advance for sparing a precious few minutes today.*

Very truly yours,

  
Armond Marcarian

**REDACTED**

Enclosures as stated

# **Deloitte & Touche LLP and Deloitte Tax LLP** **"TAX ASSOCIATE" and/or "TAX SENIOR" QUESTIONNAIRE**

The following questions concern your work for Deloitte & Touche LLP or Deloitte Tax LLP ("Deloitte") as a "Tax Associate" or "Tax Senior" in California at any time on or after December 11, 2002 through the present date. Please mark all of the boxes that apply to you during the time you held or held the "Tax Associate" or "Tax Senior" position.

Save time - complete this questionnaire ONLINE at:  
[www.dtlawsuit.com/form.html](http://www.dtlawsuit.com/form.html)

<b>1.</b> Are you currently employed by Deloitte & Touche LLP or Deloitte Tax LLP? (Please check one box below.) YES <input type="checkbox"/> NO <input type="checkbox"/>		<b>6.</b> While working at Deloitte, <u>how many hours do you/did you work per week, on average, as a Tax Associate or Tax Senior?</u> (Please check only one of the boxes to the right.) Although your hours may have varied, please give us your best estimate averaging the weeks you worked the most hours, the weeks you worked the least hours, and the weeks in between. If you averaged over 70 hours per week or under 40 hours per week, please write in the number. <input type="checkbox"/> Over 70 hours per week <input type="checkbox"/> 66-70 <input type="checkbox"/> 61-65 <input type="checkbox"/> 56-60 <input type="checkbox"/> 51-55 <input type="checkbox"/> 46-50 <input type="checkbox"/> 41-45 <input type="checkbox"/> 40 hours (or less) per week: # _____	
<b>2.</b> Dates you were employed as a <b>TAX ASSOCIATE:</b> Start Date: ____/____/____ End Date: ____/____/____ Dates you were employed as a <b>TAX SENIOR:</b> Start Date: ____/____/____ End Date: ____/____/____		<b>7.</b> Did you keep accurate time records? YES <input type="checkbox"/> NO <input type="checkbox"/>	
<b>3.</b> Which California office of Deloitte did you work in? _____		<b>7(b)</b> If so, do you still have copies in your possession? YES <input type="checkbox"/> NO <input type="checkbox"/>	
<b>4.</b> To which practice area were you assigned? (Check all that apply.) <input type="checkbox"/> Lead Tax Services <input type="checkbox"/> Multistate Tax <input type="checkbox"/> International Tax <input type="checkbox"/> Transfer Pricing <input type="checkbox"/> Global Employment Services <input type="checkbox"/> Tax Controversy Services <input type="checkbox"/> Tax Management & Advisory <input type="checkbox"/> Private Client Advisors <input type="checkbox"/> Property Tax <input type="checkbox"/> Washington National Tax <input type="checkbox"/> Tax CoSourcing <input type="checkbox"/> National Federal Tax Services <input type="checkbox"/> Mergers & Acquisitions <input type="checkbox"/> OTHER _____		<b>8.</b> As a Tax Associate or a Tax Senior, <u>did you:</u> Give tax advice to clients? YES <input type="checkbox"/> NO <input type="checkbox"/> Communicate with clients? YES <input type="checkbox"/> NO <input type="checkbox"/> <b>8(b)</b> If you did communicate with clients, was it to obtain information necessary to prepare tax returns? YES <input type="checkbox"/> NO <input type="checkbox"/>	
<b>5.</b> What percentage of the time were you able to take a <u>30-minute, duty-free meal break?</u> _____ %		<b>9.</b> As a Tax Senior, <u>what percentage of your time</u> was spent reviewing Tax Associates' work? _____ %	
<b>10.</b> Please briefly describe your duties in general categories and the % of time devoted to them. (e.g. "preparing 1120s - 50%") <u>Be sure to include BOTH CHARGEABLE and NON-CHARGEABLE hours actually worked.</u> Your percentages should total 100%. _____ _____ _____ _____ _____		<b>11.</b> If you would like to be added to the Plaintiffs' listserv to receive email updates on the lawsuit, please print your email address: _____ Please use the reverse for additional remarks or comments.	
<b>12.</b> Please print your name, sign, and date below: NAME: _____ SIGNATURE: _____ DATE: _____		<b>12(b)</b> Would you be willing to sign a formal declaration regarding your experiences? YES <input type="checkbox"/> NO <input type="checkbox"/>	
<b>13.</b> If you are willing to speak with us further, please provide your telephone number and the best time to call: _____			